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EXAMINER

ADDIE, RAYMOND W

ART UNIT

PAPER NUMBER

3671

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Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Applicati n No.

09/612,810

Applicant(s)

BRADLEY, ANTHONY S.

Examiner

Raymond W. Addie

Art Unit

3671

-- The MAILING DATE of this communication appears n th cover sheet with th correspondence address --

**Peri d f r R ply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6, 8, 11, 13-35 and 37-77 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.

- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.

- 6) ☒ Claim(s) 1-6, 8, 11, 13-35, 37-77 is/are rejected.

- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.

- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_ 6) ☐ Other: .

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 73-75 are rejected under 35 U.S.C. 102(b) as being anticipated by Bradley # 5,902,070.

Bradley discloses a System for maintaining material solids in position to form a barrier in a water environment, the system comprising:

A 1<sup>st</sup> elongated tube (67) having an interior and exterior surface.

A plurality of transverse reinforced regions (54) along its length.

A liner (68), the liner being affixed to the interior surface of the tube and is impermeable

to water. Wherein, fill material solids, such as silt and sand, and water are held in position within the tube the overall barrier being essentially water tight on its exterior fabric surface due to the impermeability of the liner material. Thus resulting in a minimal net water flow to the exterior of said 1<sup>st</sup> elongate tube.

In regards to Claims 74, 75 Bradley discloses using high strength seaming techniques and providing a plurality of outlet ports for release of excess water from the tube.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 5, 6, 8, 11, 13-16, 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holmberg # 5,158,395 in view of Dooleage #5,125,767.

Holmberg discloses a system for maintaining fill material solids in position to form a barrier or dam. The system comprising:

A plurality of elongate sheets (24) of geotextile material.

A means for seaming said plurality of elongate sheets into a continuous, tubular-shaped container, having an inside space for receiving ballast fill materials. Said 1<sup>st</sup> tubular shaped container (24) being filled with a solid fill material, such as sand.

What Holmberg does not disclose is the use of ballast tubes within said inside space of said containers. However, Dooleage teaches a system for forming a barrier or dam comprising:

A 1<sup>st</sup> tubular shaped container (13), having a plurality of 1<sup>st</sup> ballast tubes (11, 12) contained within an interior space of said 1<sup>st</sup> tubular shaped container.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to provide the system of Holmberg, with a plurality of ballast tubes,

disposed within a 1<sup>st</sup> tubular shaped container, as taught by Dooleage, in order to increase the mass and wave dissipation strength of the barrier or dam so formed.

See Holmberg, Figs. 1, 2, 8, 14, 19; Col. 5, 6, lines 24-45; Dooleage Fig. 4; col. 2, lines 30-49.

In regards to Claim 5 Holmberg discloses the use of tubular shaped containers (24) having opposed, closed ends.

In regards to Claims 6, 8, 11 Holmberg discloses essentially all that is claimed, with respect to Claim 1 above, and further discloses:

A 1<sup>st</sup> cradle tube (26) positioned adjacent to and exteriorly to said elongated container (24). The cradle tube being configured to maintain the 1<sup>st</sup> tubular shaped container (24) in a stable position to form a barrier or dam.

What Holmberg does not disclose is the use of ballast tubes within said inside space of said containers. However, Dooleage teaches a system for forming a barrier or dam comprising:

A 1<sup>st</sup> tubular shaped container (13), having a plurality of 1<sup>st</sup> ballast tubes (11, 12) contained within an interior space of said 1<sup>st</sup> tubular shaped container.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to provide the system of Holmberg, with a plurality of ballast tubes,

disposed within a 1<sup>st</sup> tubular shaped container, as taught by Dooleage, in order to increase the mass and wave dissipation strength of the barrier or dam so formed.

In regards to Claim 8 Holmberg discloses a 2<sup>nd</sup> cradle tube (26) disposed adjacent, exterior to said 1<sup>st</sup> tubular container, and opposite said 1<sup>st</sup> cradle tube (26).

In regards to Claim 11, Holmberg discloses essentially all that is claimed except for the use of a filler tube disposed with a cradle tube. However, Dooleage teaches disposing a 1<sup>st</sup> ballast tube (11, 12) within a 1<sup>st</sup> tubular container. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to provide the system of Holmberg with cradle tubes having at least 1 ballast/filler tube disposed within said cradle tube, as taught by Dooleage, in order to increase the mass and anchor strength of the cradles tubes, which are disposed beneath the sea bed or beach.

In regards to Claims 13-15, 19-21 Holmberg discloses the use of a scour apron (20) having one or more anchor tubes (22) and a blanket (20), both of which are disposed below said 1<sup>st</sup> tubular shaped container in order to support and anchor said 1<sup>st</sup> tubular container in a desired position. See col. 5, lines 20-31.

3. Claims 2, 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holmberg '395 in view of Dooleage as applied to claim 1 above, and further in view of Bradley # 5,902,070.

Holmberg in view of Dooleage discloses essentially all that is claimed, except for the use of a double layered 1<sup>st</sup> tubular container. However, Bradley teaches a geotextile container (20) having an outer and an inner layer, formed into a tubular shape via a helical seam pattern (54). See Abstract; Col. 9, lines 15-20; Figs. 7, 8.

4. Claims 17, 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holmberg '395 in view of Dooleage as applied to claim 16 above, and further in view of Bradley # 5,902,070.

Holmberg in view of Dooleage discloses essentially all that is claimed, except for the use of an impermeable 1<sup>st</sup> tubular container. However, Bradley teaches a geotextile container (20) having an outer and an inner layer, formed into a tubular shape via a helical seam pattern (54), which can be made from either permeable or impermeable geotextile fabrics. See col. 3, lines 20-23.

5. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dooleage in view of Paoluccio # 4,555,201.

Dooleage discloses essentially all that is claimed as put forth with respect to Claim 16 above, but does not disclose a ballast tube being partially filled with a solid fill material.

However, Paoluccio teaches sediment dike apparatus and method comprising:

An elongated tube partially filled with a solid fill material (15A), which can be sand, soil or the like, along or mixed with water. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to provide the barrier of Dooleage, with a solid fill material, as taught by Poaluccio, in order to increase the dead weight of the barrier. See Paoluccio Fig. 2; col. 2, line 61-col. 3, line 11.

6. Claims 26-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dooleage in view of Paoluccio as applied to claim 25 above, and further in view of Holmberg # 4,889,446.

Dooleage in view of Paoluccio discloses essentially all that is claimed, except for a scour apron and anchor tube assembly. However, Holmberg teaches an erosion control system comprising an elongated container, having a scour apron (20) a 1st cradle tube (26) positioned adjacent to the container, and an anchor tube (22). Said scour apron being in the form of a blanket and supports the elongated container on the underside of said elongated container. See Fig. 4.



7. Claims 31, 33, 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dooleage in view of Paoluccio # 4,555,201.

Dooleage discloses a barrier (10) comprising:

An elongated container (15', 13).

A plurality of ballast tubes (11, 12, 17) within the container, the ballast tubes each having an inside space and a space adjacent the outside surface of said ballast tubes.

Each ballast tube being enclosed such that there is no substantial communication or flow, between independent ballast tubes. Each ballast tube maintains an independent

solid fill level and pressure via ports (14, 15, 21). Each elongated container is

substantially impermeable via use of impermeable geotextile material. See Abstract; col. 1, line 30-col. 3, line 30. What Dooleage does not disclose is the use of solid, fill-

material within the ballast tubes. However, Paoluccio discloses a sediment dike

apparatus comprising: a mixture of water and soil/cement/sand. Said apparatus having inlet ports (16, 18b, 18c) for the water and the soil as well as outlets (20), to drain water

only from the apparatus. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to provide the barrier of Dooleage, with

inlet and outlet ports, as taught by Paoluccio, in order to fill the apparatus at a very rapid rate. See Paoluccio col. 3, line 45-col. 4, line 44.

In regards to Claims 33, 34 Dooleage discloses the use of a geotextile material made from vinyl plastic, reinforced neoprene rubber or reinforced butyl rubber. It is old and well known that vinyl plastics are used to form synthetic fibers for reinforcing other geotextile materials.

8. Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dooleage in view of Paoluccio as applied to claim 31 above, and further in view of Cizek et al. # 5,232,429.

Dooleage in view of Paoluccio discloses essentially all that is claimed, to include a barrier having partially permeable and impermeable sections to improve draining the container of water and fill solids. What the combination does not disclose is making the Container impermeable by applying a waterproof coating to the container.

However, Cizek et al. teaches a method for making, and a continuous tube of geotextile material. Said tube having an area made impermeable by application of a coating of polymeric or rubber or a wax. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to provide the barrier of Dooleage in view of Paoluccio, with a coating of waterproof material, as taught by Cizek et al. in order to control the rate of permeability of the barrier. As suggested by Paoluccio. See Paoluccio col. 3, lines 50-55; Cizek et al. col. 2, lines 17-21.

9. Claims 35, 37-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dooleage in view of Bradley # 5,902,070.

Dooleage discloses essentially all that is claimed, except for the use of both permeable and impermeable geotextile fabrics. However, Bradley teaches a geotextile container (80) comprising a double layer construction having an inner, non-permeable layer (68) and an outer layer (69) of unknown permeability. Bradley further teaches that the container can be made from permeable and/or non-permeable geotextiles, as the application demands. See col. 3, lines 15-30, col. 9, lines 13-25, col. 10, lines 42-56, col. 12, line 30-col. 13, line 34.

In regards to Claims 37-41, which depend from Claim 42, Dooleage discloses an elongated fabric container (15) having 2 opposed ends.

A plurality of independent ballast tubes (11, 12) extending longitudinally within the container. The ballast tubes each having an inside and outside space, the ballast tubes being configured to receive fill material solids on their respective inside spaces. What Dooleage does not disclose is reinforcing the container with a plurality of reinforcement device. However, Bradley teaches a geotextile container having a plurality of spaced hoops, a spiral hoop formed by stitching several layers of geotextile sheet material together, to form a helically coiled tube, stitched about a spiral seam (54) on the outside of said container. See col. 6, line 57-col. 7, line 7. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to make

the barrier in a helically coiled tube, in order to increase the radial load strength of the container.

10. Claims 42, 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dooleage in view of Labora GB 1,48,986.

Dooleage discloses all that is claimed, as put forth with respect to Claim 35 above, but does not disclose a plurality of longitudinally spaced, reinforced regions along the length of the elongated container. However, Labora teaches an elongated container (1) having a plurality of longitudinally spaced, reinforced regions (6, 7, 8) being supportive of the elongated container and providing a greater resistance to stress than the fabric of the container. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to provide the barrier of Dooleage, with longitudinally spaced reinforced regions, as taught by Labora, in order to increase the load strength of the barrier. See Labora cols. 2, 3.

In regards to Claim 43, Labora teaches the use of longitudinal belts (4), which can be formed as an integral part of the opposing walls of the container. Said reinforced regions and longitudinal belts can be plastic or metal, in the shape of strips, cords, plates etc., and can be arranged depending on the objects being sought. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to provide the barrier of Dooleage, with a longitudinal belt, as taught by Labora, in order to increase the load strength of the barrier.

11. Claim 44 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cizek et al. # 5,232,429 in view of Dooleage.

Cizek et al. discloses an elongated fabric formed into a tube, sleeve, or sock of woven textile sheet material (10). Said fabric being helically shaped and joined at a spiral seam (22) by draping the fabric over a drum (34) and securing the spiral seam, thereby forming a tubular, elongated container. See col. 6.

What Cizek et al. does not disclose is the use of a ballast tube disposed within said tube. However, Dooleage teaches a tubular apparatus (13) for forming a barrier, having a plurality of ballast tubes (11, 12) disposed within said tubular apparatus (13).

therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to provide the apparatus of Cizek et al. with at least one ballast tube as taught by Dooleage, in order to increase the wave dissipation strength of the apparatus.

12. Claims 45, 49-75 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dooleage in view of Bradley # 5,902,070.

Dooleage discloses an apparatus for forming a barrier, comprising:

An impermeable elongate geotextile fabric container (13) having an interior and an exterior.

At least 2, geotextile 1<sup>st</sup> ballast tubes (11, 12) disposed within the interior of the elongated fabric container. Each of the 2 ballast tubes containing water.

What Dooleage does not disclose is the use of permeable ballast tubes.

However, Bradley teaches that barriers comprising elongate geotextile containers can be made from either permeable or impermeable materials depending on the application for which the container is inflated. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to make the apparatus of Dooleage, from both permeable and non-permeable geotextile fabrics, as taught by Bradley, in order to enable the apparatus to self-inflate, by filtering silt from ambient water in which the apparatus is disposed. See col. 9, 10.

In regards to Claims 49-51 Bradley teaches the elongated fabric container (66, 67) can have an inner layer and an outer layer (68, 69). Bradley further teaches the use of permeable and impermeable geotextile fabrics depending on whether the container is being filled with a sand or silt laden water. Hence, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to make the apparatus of Dooleage, from both permeable and non-permeable geotextile fabrics, as taught by Bradley, in order to enable the apparatus to self-inflate, by filtering silt from ambient water in which the apparatus is disposed. See col. 11, lines 7-52.

In regards to Claims 52-61, 63-70 Bradley teaches an elongated, geotextile fabric container (50) having transverse, reinforced regions (54) being configured to provide structural support to the container.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to provide the container of Dooleage, with transverse reinforcing regions, as taught by Bradley, in order to increase the wave dissipation strength of said container.

Said reinforced regions can comprise: at least one hoop, or one rib (54); or one belt or one strap (as disclosed by Dooleage), such that said transverse reinforcing regions extend at least once, circumferentially around the container and in a direction that is generally transverse and helically coiled around the circumference of the container.

Said at least one reinforced region comprises at least 2 thicknesses of fabric.

See Bradley col. 9, line 26-col. 10, line 26, col. 12.

In regards to Claims 60, 70 Dooleage discloses a transverse reinforced region may comprise a strap that is disposed exteriorly of at least one container. See col. 2, lines 37-40.

In regards to Claim 61, 71 although neither Dooleage or Bradley disclose disposing the reinforced regions inside of the container, to do so would be an obvious manner in which to protect the reinforced region from direct loading by tidal forces, and an obvious way to protect the reinforced regions from corrosive environments, such as salt water. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made,

to provide the apparatus of Dooleage in view of Bradley with reinforced regions inside said container, in order to protect the reinforced regions from wear and damage.

In regards to Claim 68 Bradley teaches that anchoring straps (54) can be connected by a longitudinal seam (64) in order to further reinforce said elongate container.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to provide the apparatus of Dooleage with anchor straps connected by a longitudinal seam, as taught by Bradley, in order to further reinforce the container.

In regards to Claim 62 Dooleage discloses an apparatus for forming a barrier comprising:

An elongated fabric container (13) having 2 ends and a plurality of ballast tubes (11, 12) disposed within said fabric container. What Dooleage does not disclose is providing a plurality of transverse reinforced regions being configured to provide structural support to the container. However, Bradley teaches an elongated, geotextile fabric container (50) having transverse, reinforced regions (54) being configured to provide structural support to the container. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to provide the container of Dooleage, with transverse reinforcing regions, as taught by Bradley, in order to increase the wave dissipation strength of said container.



Said reinforced regions can comprise: at least one hoop, or one rib (54); or one belt or one strap (as disclosed by Dooleage), such that said transverse reinforcing regions extend at least once, circumferentially around the container and in a direction that is generally transverse and helically coiled around the circumference of the container.

In regards to Claim 72, Bradley discloses providing at least 2 ports defined along the length of the container. See fig. 11b. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to provide the apparatus of Dooleage, with a plurality of ports defined along the length of the container, as taught by Bradley, in order to reduce the time needed to fill the container with fill material. See Figs. 11a, 11b, 11c.

13. Claims 46-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dooleage in view of Bradley # 5,902,070 as applied to Claim 45 above, and further in view of Honjo et al. # 3,911,170.

Dooleage in view of Bradley discloses essentially all that is claimed, to include the use of impermeable, geotextile fabrics; but does not disclose how said fabric is made impermeable to water. However, Honjo et al. teaches a method of processing porous materials in order to make the materials impermeable. Said method comprising coating a porous material with a surface-coating material and then drying said coating.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to provide the apparatus of Dooleage in view of Bradley, with a water impermeable coating, as taught by Honjo et al. in order to control the degree of impermeability. See Honjo et al. Abstract.

14. Claims 76, 77 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bradley in view of Dooleage.

Bradley discloses a cylindrical geotube water barrier (48) having an inner surface formed by longitudinal seams (32, 33) said barrier comprising:

An elongated fabric container (48) having 2 ends and at least 2 seams. The container being formed by joining together at one of said at least 2 seams, at least 2 tubular sections to form a transversely oriented reinforced region being configured to provide structural support to the geotube container with a high resistance to mechanical damage.

What Bradley does not disclose is providing a ballast tube disposed on the inner surface to the container. However, Dooleage disclose a geo tube water barrier (10) comprising: A 1<sup>st</sup> elongate fabric container (13) having a plurality of ballast tubes (11, 12) disposed within said 1<sup>st</sup> elongate container. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to provide the geotube of

Bradley with a plurality of ballast tubes, as taught by Dooleage, in order to increase the wave dissipation strength of said container.

In regards to Claim 77, Dooleage teaches the use of anchor straps for reinforcing said geotube. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to provide the geotube of Bradley with a plurality of anchor straps, as taught by Dooleage, in order to increase the wave dissipation strength of said container.

#### **Method Claims 22-24**

15. Claims 22-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dooleage in view of Holmberg 4,889,446.

Dooleage discloses a method of forming a barrier. The method comprising the steps of:  
Providing an elongated container (13).

Providing a plurality of independent ballast tubes (11, 12) within the container. Each ballast tube being enclosed such that there is no substantial communication or flow between independent ballast tubes.

Pumping water into the ballast tube.

What Dooleage, does not disclose is the method step of filling the ballast tubes with solid fill material. However, Holmberg teaches a method of erosion control comprising the steps of: pumping fill material solids into a dam or barrier-forming, elongated

containers, to include containers (24) and cradle tubes (26) and anchor tubes (22), via a pumping device (64). See col. 7, lines 15-50. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to provide the method of forming a barrier of Dooleage, with the method step of pumping a water/solids slurry into the elongated containers and tubes, as taught by Holmberg, in order to increase the mass and wave dissipation strength of the barrier.

### ***Response to Arguments***

16. Applicant's arguments with respect to claims 16, 8, 11, 13-21, 44 have been considered but are moot in view of the new ground(s) of rejection.

17. Applicant's arguments filed 2/08/02 have been fully considered but they are not persuasive.

The Applicant argues against the rejection of Claim 35 by stating "Dooleage does not teach ballast tubes that are semi-permeable". The Applicant supports the argument by stating "Dooleage teaches only the use of impermeable bags that are filled with a liquid namely water not solid fill".

However, Dooleage discloses the structure claimed. Bradley teaches that any geotextile material can be incorporated as a permeable or impermeable geotextile fabric depending on the application of the barrier system and that the use of permeable or impermeable fabrics is also based on whether solid fill materials are added directly to

the container, or if the application contemplates filling the container by filtering silt from ambient water in which the container is disposed. See col. 13.

Therefore, the argument is not persuasive.

The Applicant argues "the combined disclosures of Dooleage and Bradley are further deficient in failing to suggest the use of fill solids (as in Bradley) in place of the liquid water used to fill the ballast tubes of Dooleage. However, Bradley clearly teaches that some port holes can be used to bring fill material (18) into inner cavity 16, and some port holes can be used to permit expulsion of water displaced from cavity 16 as bag (20) is filled with solid fill material (18)". See col. 9, lines 5-10.

Further Bradley teaches the container is to be filled with water before being filled (with a fill material 18).

Hence, the argument is not persuasive.

The Applicant argues against the rejection of Claims 37-41 and 43 by stating "Each of claims 37-41 and 43 depends on claim 42, which is patentable...for the reasons noted above. However, the arguments cited above are non-persuasive. Hence, Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

Further, Claim 42 has also been rejected as being unpatentable over Dooleage in view of Bradley, hence, the amendments to Claims 37-41 and 43 are irrelevant.

Applicant argues against the combination of Dooleage in view of Labora by stating "Labora fails to suggest or disclose using a plurality of independent ballast tubes inside an elongated fabric container...Instead of ballast tubes, the teaching of Labora are directed to a lattice-type structure that resembles the use of rebar, cemented in place". However, the use of ballast tubes is clearly disclosed by Dooleage. Labora was combined with Dooleage in order to show the obvious nature of adding transverse, reinforcing members (6,7,8) which provide a greater resistance to stress than the fabric container alone. Since the Applicant's arguments are not drawn to the prior art teachings cited, the arguments are moot.

Applicant argues against the rejection of Claims 22-24 by stating "There is no teaching or suggestion in Dooleage or Holmberg of pumping a water/solids slurry within ballast tubes that are provided within an elongated container".

However, Dooleage clearly discloses the method steps of providing an elongated container (13) and providing a plurality of ballast tubes (11, 12) within said elongated container and pumping water into said elongate container and ballast tubes in order to inflate said container.

Bradley positively recites the use of a cementitious material or sand is injected in a slurry of water into the elongate container.

Hence, the argument is not persuasive.

The Applicant argues against the rejection of Claims 25, 31, 33, 34 by stating "Dooleage lacks any teaching of solids within its ballast tubes...even though Paoluccio discloses a dike (10) that contains solids as fill material".

The argument is not persuasive since when taken as a whole, the combined teachings of Dooleage in view of Paoluccio discloses all the structural limitations claimed.

Further, the Applicant admits that Paoluccio teaches "water is always removed from the solids...by pervious portions of the envelope (11) that is left drained of water to become the solids filled dike (10). Paoluccio further teaches providing a mixture of water and soil into the envelope, said water occupying an upper portion of the envelope and a lower portion occupied by said soil.

Hence, the Applicant has acknowledged Paoluccio teaches removing water from the envelope and filling the envelope with sand. Therefore, the argument is seen as proper and is upheld.

Applicant argues against the rejection of Claims 26-30 by stating "Each of claims 26-30 depends from claim 25...as Holmberg fails to include ballast tubes and fails to include ballast tubes partially filled with solids and partially with liquid, Holmberg fails to correct the deficiencies...in Dooleage and Paoluccio".

However, Holmberg was combined with Dooleage and Paoluccio to show the obvious nature of providing a scour apron having anchor tubes, for preventing wave action from eroding the sea bed below the barrier/container.

Since the Applicant's arguments are not drawn to the combined teachings of the prior art, as cited, the argument is moot.

Further, Applicant's assertions, that deficiencies exist in the teachings of Dooleage and Paoluccio, fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references, since all positively recited limitations are taught in the references cited.

### ***Conclusion***


Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).



A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raymond Addie whose telephone number is (703) 305-0135. The examiner can normally be reached on Mon-Fri from 6:30 am to 3:00 pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Will, can be reached on (703) 308-3870. The fax phone number for this Group is (703) 305-3597.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1113.

  
**Thomas B. will**  
**Supervisory Patent Examiner**  
**Group 3600**

**RWA**  
**4/21/2002**